

Ser. No. 09/384,784**REMARKS**

In this examination the Examiner issued a final rejection on July 5, 2001 (Paper No. 12). Applicants responded with a Response Under 37 C.F.R. § 1.116 mailed October 3, 2001 and received by the Patent and Trademark Office on October 9, 2001. That Response contained only Remarks traversing the final rejection. None of the claims were amended by that Response. The last time that any claims were amended by Applicants was in the Response of April 12, 2001 (received by the PTO on April 16, 2001), prior to the Office Action July 5, 2001, and those amendments (as indicated in that April 12th Response) were merely clarifying or dealing with 35 U.S.C. § 112 matters.

In Paper 14, the current Office Action, the Examiner rescinded the final rejection issued on July 5th and issued a new final rejection, based on different art. In Paragraph 4 (page 10) of Paper 14, the Examiner states

"Although the prior final rejection has been rescinded, the current action is made final due to the filing of amendment "D", which necessitates making the current new action final."

Applicants request clarification of the Examiner's position and withdrawal of the new final rejection.

Specifically, Applicants cannot identify any "Amendment 'D'" to which the Examiner refers. Applicants have not identified any of their amendments by any letter designation, and to the best of Applicants' knowledge there is no document called "Amendment 'D'" in the record, nor has the Examiner identified any such document beyond the uninformative label "Amendment 'D'." Since the Examiner has stated that such "Amendment 'D'" is the sole basis for his having made the new rejection final, Applicants are thereby deprived of their right to respond and obtain reconsideration under 35 U.S.C. § 132(a) since they have insufficient identification of the Examiner's grounds for his action.

The only action that Applicants have taken since the July 5th final rejection is to file the October 3rd Response. However, Applicants made no amendment in that Response, so Applicants must assume that the Examiner's "Amendment 'D'" cannot have been that

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Response. Applicants had previously presented the April 12th clarifying amendments but those would have been fully considered and dealt with by the Examiner in the final rejection of the July 5th Office Action.

"Amendment 'D'" also cannot have involved any newly available art, since the Wade and Pink et al. patents have been discussed at length previously during the examination and the Benny et al. patent is cited and distinguished in the original Specification (page 4) and was included in the Information Disclosure Statement, which was acknowledged by the Examiner on August 22, 2000.

Applicants therefore respectfully request that:

1. The document referred to by the Examiner as "Amendment 'D'" be fully identified for Applicants;
2. The reasons why the "Amendment 'D'" is believed by the Examiner to have "necessitated" the new grounds of rejection based on the long-known Benny et al. reference be fully set forth;
3. The new final rejection designation be withdrawn and the rejection be designated as non-final, so that Applicants will have the opportunity under 35 U.S.C. § 132(a) to respond as a matter of right to the new grounds of rejection; and
4. The period for response to the new grounds of rejection be reset to start upon the issuance of such new non-final rejection.

In the absence of clear and complete identification of "Amendment 'D'" and its specific relevance to the claims, and of why a new rejection based on art which is old in the record was "necessitated," Applicants respectfully request that the new grounds of rejection be withdrawn. Since Applicant's prior Response resulted in rescission of the prior final rejection, it would necessarily follow that the claims as amended on April 12th are then in condition for allowance, including (as noted in both the April 12th and October 3rd Responses) the dependent claims thereto which have been temporarily withdrawn pending resolution of the patentability of the present claims. Therefore, such allowance of all Claims 1-164, as previously amended, is respectfully requested.

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Should the Examiner believe that allowance of this application might be expedited by further discussion of the issues, a telephone call to the undersigned attorney, collect, at the telephone number listed below, is cordially invited.

Respectfully submitted,

Date: November 17, 2001

By:


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